



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue
Seattle, WA 98101

Reply to
Attn Of: OWW-131

FEB 10 2005

Department of Ecology
Water Quality Program
FEB 14 2005

Melissa Gildersleeve
Washington Department of Ecology
P. O. Box 47600
Olympia, Washington 98504-7600

Re: Compliance Schedules for Dams (WAC 173-201A-510(5))

melissa,
Dear Ms. Gildersleeve:

In our recent approval action of January 12, 2005, EPA approved portions of the 2003 revisions to Washington's Water Quality Standards, EPA did not take action on the provision addressing compliance schedules for dams. EPA did not act on this provision because we do not consider this provision a water quality standard under section 303 (c) of the Clean Water Act (CWA), for the reasons discussed below.

Under Section 303(c) of the CWA, water quality standards, include use classifications, criteria to protect the use classification, an antidegradation policy, and certain implementation policies (e.g., mixing zone policy). Under the CWA, water quality standards are not directly enforceable, rather they are implemented through NPDES or 404 permitting programs, and/or the total maximum daily load (TMDLs) program under CWA section 303(d). However, water quality standards are directly enforceable under Washington State law. As written, the compliance schedule provision is in the nature of an enforcement discretion provision under state law applicable to dam operations. Since this provision is not a water quality standard under Section 303 (c), EPA is not acting on it. EPA notes that the State of Washington may still use this provision and "any other appropriate requirement of state law" for purposes of CWA section 401 certification. See P.U.D. No. 1 of Jefferson County v. Washington Department of Ecology, 511 U.S. 711-712 (1994).

If you have any questions, please feel free to contact me at (206) 553-6977 or Kathleen Collins at (206) 553-2108.

Sincerely,

Paula VanHaagen
Manager
Standards and Planning Unit

cc: Fran Wilshusen, Northwest Indian Fisheries Commission
Ken Berg, USFWS
Steve Landino, NOAA